89-1088

Supreme Court, U.S.
FILED
DEC 18 1989
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

VIRGINIA DALTON and
CHIROPRACTOR DANIEL J. DALTON,

Petitioners,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
NEW JERSEY SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

THOMAS F. DORN, JR.*
ROBERT GLICKMAN
Attorneys for Petitioners
15 Village Plaza
South Orange, New Jersey 07079
(201) 761-1200

**Counsel of Record*

Questions Presented

1. Is N.J.A.C. 13:35-7.1, which requires Petitioner Chiropractor Daniel Dalton and all chiropractors to accept the title of "chiropractic physicians", which is a religious title in violation of Petitioner's religious beliefs and requires New Jersey Licensed Chiropractors who are licensed to practice chiropractic and not medicine, to perform medical procedures, diagnose medical conditions, and refer patients to physicians and is at variance and repugnant to N.J.A.C. 13:35-6.1, unconstitutional?

2. Did the Appellate Division err in holding that Petitioner Daniel Dalton had to give to Respondent a Verification/Certification pursuant to

N.J.S.A. 17:33A-6(b) when Petitioner Daniel Dalton, the practitioner, was not seeking payment from Respondent and due to his beliefs and his right to privacy does not deal with insurance companies?

3. Did the Appellate Division err in holding N.J.S.A. 39:6A-13(b) constitutional, by requiring Petitioner Daniel Dalton to produce his original patient records to Respondent despite the fact that Petitioner Daniel Dalton had not entered into any contract with Respondent, does not deal with any insurance companies based on his right to privacy and is not a physician, which he cannot be based on his religious beliefs?

4. Did the Appellate Division err in holding N.J.S.A. 39:6A-13(d) constitutional, which statute requires

insureds to be examined only by a physician, thereby not accommodating the religious beliefs of individuals who do not believe in physicians, and which statute is at variance and repugnant to N.J.S.A. 39:6A-2(e)?

5. Does the State of New Jersey have a right to religiously coerce Petitioner Daniel Dalton to license and promote the religion of medicine, and to license and promote the religion of medicine in preference over the religion of chiropractic?

6. Does the State of New Jersey have the right to display the gods/deities which are symbols/icons of the religion of medicine on government property and to use tax dollars to support the religion of medicine?

7. Does the State of New Jersey have the right under N.J.S.A. 39:6A-2(e) to determine or recognize a religious method of healing?

8. Does the State of New Jersey have the right to recognize Petitioner Virginia Dalton's religious right to be only examined by a straight chiropractor but then deny Petitioner Daniel Dalton the right to be a straight chiropractor in New Jersey, which in effect negates the straight chiropractic religious rights of Petitioner Virginia Dalton?

PARTIES

The Petitioners are Virginia Dalton and Chiropractor Daniel Dalton.

The Respondent is State Farm Mutual Automobile Insurance Company.

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED	i
PARTIES	v
TABLE OF AUTHORITIES	viii
DECISIONS BELOW	1
JURISDICTION	2
STATUTORY PROVISIONS	3
STATEMENT OF THE CASE	4
ARGUMENT IN SUPPORT OF GRANTING THE WRIT	16
I. The New Jersey Appellate Division and Supreme Court Erred in Not Holding N.J.A.C. 13:35-7.1 Unconstitutional	16
II. The New Jersey State Courts Violated Petitioner Daniel Dalton's Due Process Rights In Their Interpretation And Application Of N.J.S.A. 17:33A-6(b)	26

III. The New Jersey State Courts' Violated Petitioner Daniel Dalton's Due Process and Privacy Rights In Their Interpretation and Application of N.J.S.A. 39:6A-13(b) 32

IV. The New Jersey State Courts Failed to Uphold Petitioner Virginia Dalton's Claim That N.J.S.A. 39:6A-13(d) is Unconstitutional As Presently Drafted..... 39

V. The New Jersey State Courts' Decisions In This Case Have Resulted In An Injustice To Petitioner Virginia Dalton..... 42

CONCLUSION..... 46

TABLE OF AUTHORITIES

CASES: PAGE

Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974) 20

County of Allegheny v. American Civil Liberties Union, U.S. 109 S.Ct. 3086 (1989) 26

Everson v. Board of Education, 330 U.S. 1 (1947)..... 25

FCC v. Pacifica Foundation, 438 U.S. 726 (1978)..... 30

Griswold v. Connecticut, 381 U.S. 479 (1965)..... 30,45

In the Matter of the Application for Approval by Sherman College of Straight Chiropractic 164 N.J. Super. 519, 397, A.2d 362 (App. Div. 1979)..... 17,18

Kerkman v. Hintz, 418 N.W. 2d 975 (Wis. 1988)..... 19,20,27

Parsippany Hills Assn. v. Rent Leveling Board, 194 N.J. Super 34, 476 A. 2d 271 (App. Div. 1984)..... 31

Schebert v. Verner, 374 U.S. 398 (1963)..... 37

Torasco v. Watkins, 367 U.S. 488 (1961)..... 25

Vlandis v. Kline, 412 U.S. 441 (1973)..... 20

Wallace v. Jaffree, 472 U.S. 38 (1985)..... 25

Watson v. Jones, 80 U.S. 679 (1871)..... 25

Wilk v. American Medical Assn., 671 F. Supp. 1465 (N.D. Ill. 1987)..... 19

Wooley v. Maynard, 430 U.S. 705 (1977)..... 20,21

Other Authorities

Dorland's Illustrusted Medical Dictionary, 1974..... 23,24

Holy Bible, Catholic Action Edition, 1953..... 24

The Chiropractor's Adjuster, the Science, Art and Philosphy of Chiropractic, D.D. Palmer..... 18,19

DECISION BELOW

Petitioners appealed a Final Order of the Superior Court of New Jersey, Law Division, to the Appellate Division of the Superior Court of New Jersey. On May 3, 1989, the Appellate Division affirmed the decision of the Law Division in an opinion reported at 234 N.J. Super 128, 560 A.2d 683 (App. Div. 1989). Following Petitioners' Motion for Reconsideration of the Appellate Division's decision, on May 22, 1989, the Appellate Division entered a Final Order denying Petitioners' Motion For Reconsideration.

Petitioners filed a Notice of Petition for Certification to the New Jersey Supreme Court. On September 26, 1989, the New Jersey Supreme

Court denied Petitioners' Petition for Certification.

JURISDICTION

The decree of the New Jersey Supreme Court denying certification of the judgment of the Appellate Division was entered on September 26, 1989. Jurisdiction is conferred by 28 U.S.C. Section 1257(a).

STATUTORY PROVISIONS

1. N.J.A.C. 13:35-7.1.
2. N.J.A.C. 13:35-6.1
3. N.J.S.A. 17:33A-6(b).
4. N.J.A.C. 13:35-6.5(b).
5. N.J.S.A. 39:6A-13(b).
6. N.J.S.A. 39:6A-13(d).
7. N.J.S.A. 39:6A-2(e).

See Appendix

STATEMENT OF THE CASE

This case arises from an automobile accident which occurred on February 24, 1987, in which Petitioner Virginia Dalton sustained serious injuries. Pursuant to her religious beliefs, Petitioner Virginia Dalton did not seek medical treatment. Petitioner, Virginia Dalton is an Essene Christian and is a member of the Congregation of Universal Wisdom and as part of her religious beliefs based on historically established Judeo-Christian facts, she knows and believes that all physicians represent Satan. Accordingly, she received straight/pure chiropractic care from Petitioner Daniel Dalton, who coincidentally is her husband, and who is also an Essene Christian and a certified Minister of the Congregation of Universal Wisdom, holding the same religious beliefs as

his wife. Petitioner Daniel Dalton is a straight/pure chiropractor who only uses his hands to adjust a patient; based on his religious beliefs, he does not use any medical equipment, tests, procedures or terminology in his traditional pure chiropractic practice.

Petitioner Virginia Dalton received straight/pure chiropractic care from Petitioner Daniel Dalton. On May 18, 1987, Petitioner Virginia Dalton paid Petitioner Daniel Dalton $4,490.00 for intensive chiropractic care she had received from February 24, 1987. Upon payment, Petitioner Daniel Dalton gave Petitioner Virginia Dalton, as is his office procedure for all of his patients, paid-in-full receipts signed by him, setting forth corrective care he performed and the dates of the care.

Petitioner Virginia Dalton then submitted a claim to Respondent,

seeking reimbursement of the $4,490.00 which she paid to Petitioner Daniel Dalton. Following unsuccessful negotiation, and following Respondent's refusal to acknowledge Petitioner Virginia Dalton's religious beliefs and refusal to grant Petitioners request to have the matter arbitrated by the Insurance Commission, Respondent brought a costly Order to Show Cause application in the Law Division of the New Jersey Superior Court to compel Petitioner Daniel Dalton to submit a verification/certification pursuant to N.J.S.A. 17:33A-6(b) to Respondent. Respondent also wanted to compel Petitioner Daniel Dalton to submit to Respondent his original patient records of Petitioner Virginia Dalton pursuant to N.J.S.A. 39:6A-13(b). Petitioner Daniel Dalton responded that Respondent's request did not apply to him as he was not seeking payment,

(which response was confirmed in Petitioner's conversation with a representative at the New Jersey Department of Insurance) and responded that he does not have and never has had any contact or dealings with insurance companies with regard to his chiropractic practice. All of Petitioner Daniel Dalton's patients pay Petitioner in full and, if applicable, seek reimbursement from their insurance company.

Also as part of their Order to Show Cause application, Respondent sought to compel Petitioner Virginia Dalton to be examined pursuant to N.J.S.A. 39:6A-13(d) by one of Respondent's chiropractors, none of whom were straight chiropractors. In an Order dated March 29, 1988, the Law Division Judge ordered that Petitioner Daniel Dalton did have to submit a verification/certification directly to

Respondent despite the fact that Petitioner Daniel Dalton was not seeking payment from Respondent. The Law Division Judge also ordered that Petitioner Daniel Dalton had to produce his original patient records to Respondent. In addition, the Law Division Judge ordered that Petitioner Virginia Dalton be examined by one of the list of five straight chiropractors. As to the last aspect of the Order, the Law Division Judge recognized Petitioner Virginia Dalton's religious beliefs and ordered that she be examined only by one of five straight chiropractors. Petitioner Virginia Dalton submitted a list of five straight chiropractors to the court, which were religiously acceptable to her. This list was incorporated into the March 29, 1988 Order. The Judge conditioned her

review on one of the straight chiropractors.

Petitioners initially appealed only the aspect of the March 29, 1988 Order involving Petitioner Daniel Dalton's having to submit a verification/certification pursuant to N.J.S.A. 17:33A-6(b) to Respondent. On October 12, 1988, the Appellate Division of the New Jersey Superior Court denied a Motion For Summary Disposition brought by Petitioners and directed the parties to address in their respective merits briefs for the appeal, the impact, if any, of the legislative repeal of N.J.S.A. 17:33A-6(b).

A day earlier, on October 11, 1988, Petitioners filed a motion to amend their Notice of Appeal to include constitutional challenges to N.J.S.A. 39:6A-13(b) and N.J.S.A. 39:6A-13(d). Specifically,

Petitioner Daniel Dalton wanted to include in the appeal that the March 29, 1988 Order which required him to submit his patient records of Petitioner Virginia Dalton directly to Respondent violated due process and other constitutional rights. Also, Petitioner Virginia Dalton wanted to include in the appeal that N.J.S.A. 39:6A-13(d) was unconstitutional as it requires an insured to be examined by a physician at the insurer's request. On November 3, 1988, the Appellate Division granted Petitioners' motion to amend their Notice of Appeal.

On December 5, 1988, under a two week time constraint verbally imposed by a staff attorney at the Appellate Division, Petitioners submitted a supplemental letter brief to the Appellate Division in support of their Amended Notice of Appeal. On February 7, 1989, Respondent submitted an

untimely brief in opposition to Petitioners' supplemental letter brief. Respondent's brief included new issues and expanded issues. Petitioners then made a motion to strike Respondent's letter brief as being untimely or in the alternative to be given an opportunity to respond to Respondent's letter brief. Petitioners wanted to respond to Respondent's letter brief because Respondent's letter brief contained gross mischaracterizations and incorrect definitions of "straight chiropractor" and "physician". On March 2, 1989, the Appellate Division denied Petitioners' motion to strike Respondent's supplemental brief and denied Petitioners' request for permission to respond to Respondent's brief.

On May 3, 1989, the Appellate Division affirmed the Law Division's

March 29, 1988 Order. In its decision, the Appellate Division, in discussing Petitioner Daniel Dalton's allegation that N.J.S.A. 39:6A-13(b) did not apply to him because he was not a physician, stated that it assumed that N.J.A.C. 13:35-7.1, which characterizes all chiropractors as "chiropractic physicians" and requires all New Jersey chiropractors to accept that title and requires chiropractors to perform medical tests, practices and beliefs was not objected to by Petitioner Daniel Dalton. Obviously, the Appellate Division was misled by Respondent's brief; its assumption would not have occurred if Petitioners could have responded to Respondent's brief.

Prior to the Appellate Division decision, this regulation, N.J.A.C. 13:35-7.1, had not been mentioned by

the Law Division Judge or by either of the parties to the case. On May 15, 1989, Petitioners made a motion for reconsideration of the Appellate Division decision. Petitioners submitted certifications in support of their motion for reconsideration which certifications have been filed as a lodging in the Clerk's Office of the United States Supreme Court.

As part of their motion for reconsideration before the Appellate Division, Petitioners argued the unconstitutionality of N.J.A.C. 13:35-7.1, which was relied upon by the Appellate Division in its decision of May 3, 1989. Petitioner Daniel Dalton argued that N.J.A.C. 13:35-7.1 violated his due process and religious rights and was at variance and repugnant to N.J.A.C. 13:35-6.1. Petitioner Daniel Dalton also submitted another certification, which is also lodged

with this Court, from another Appellate Division case. In that Certification Petitioner noted that he objected, by letter to the New Jersey Board of Medical Examiners, to N.J.A.C. 13:35-7.1 in 1984 prior to the regulation being enacted.

Furthermore, in their motion for reconsideration certifications, Petitioners set forth historical fact and quotations that chiropractic and medicine were each distinct, diametric religions. Also petitioners argued that the State should not license medicine and chiropractic, and that the State should not display deities/gods which are symbols of the religion of medicine and should not use tax dollars to support its religious activities. In addition, Petitioners argued that N.J.S.A. 39:6A-2(e) was unconstitutional because it includes the phrase, "recognized religious" thereby

permitting the State to give preference or endorse only certain religions. On May 22, 1989, the Appellate Division denied Petitioners' motion for reconsideration.

Petitioners then filed a Petition for Certification to the New Jersey Supreme Court, arguing all of the constitutional issues addressed to the Appellate Division including the issues raised in Petitioners motion for reconsideration of the Appellate Division's decision. On September 26, 1989, the New Jersey Supreme Court denied Petitioners' Petition for Certification.

ARGUMENT IN SUPPORT OF GRANTING THE WRIT

I. The New Jersey Appellate Division And Supreme Court Erred In Not Holding N.J.A.C. 13:35-7.1 Unconstitutional.

In their motion for reconsideration before the Appellate Division and in their Petition for Certification before the New Jersey Supreme Court, Petitioners argued that N.J.A.C. 13:35-7.1 was unconstitutional. This regulation characterizes and titles all chiropractors as "chiropractic physicians", requires all chiropractors to use medical terms and procedures, and beliefs and requires all chiropractors to have a duty to refer patients to physicians if necessary. Accordingly, N.J.A.C. 13:35-7.1 creates an irrebuttable presumption that all chiropractors are chiropractic physicians who utilize

medical terms, equipment and procedures.

Petitioner Daniel Dalton, pursuant to his religious beliefs, does not believe in any physicians, medicine, medical tests, procedures or terminology. He does not treat disease. He is a straight chiropractor. He is not a medical doctor/physician. He chiropractically adjusts patients with his hands. A straight chiropractor has been defined in a New Jersey Appellate Division decision as, "Medical procedures including, but not limited to, the diagnosis, prognosis and treatment of disease add nothing to 'straight' chiropractic. The 'straight' chiropractor has no interest, professionally or legislatively in adding medical procedures or services to his practice." In the Matter of the Application For Approval by Sherman College of Straight

Chiropractic, 164 N.J. Super. 519, 524, 397, A.2d 362, 365 (App. Div. 1979) as noted in Petitioner's motion for reconsideration papers, lodged with this Court, the founder of chiropractic, D.D. Palmer established chiropractic as a theology and as a hands only system of corrective spinal care. B.J. Palmer, D.D. Palmer's son, stated that chiropractors are Apostles of God, the one true God in the Bible.

In Petitioner Daniel Dalton's certification in support of Petitioners' Motion For Reconsideration before the Appellate Division, Petitioner Daniel Dalton demonstrated that chiropractors are not physicians and are completely separate and distinct. As set forth by The founder of Chiropractic, D.D. Palmer, stated on Page 400 in The Chiropractor's Adjuster, the Science, Art and Philosophy of Chiropractic, "Chiro-

practors do not treat, cure, heal or diagnose disease. As a science, it is unlike any other system; it will not mix with any other." In the same book, at page 400, D.D. Palmer states:

> A chiropractor is one who is versed in the science of chiropractic and the art of adjusting vertebrae. A physician is one who has received the degree of M.D., Doctor of Medicine, and is licensed to practice medicine... the expression, a chiropractic physician, or a physician chiropractor, is the joining of two words of opposite meaning.

A physician, on the other hand, is a medical doctor who treats disease.

State and Federal courts, including the Wisconsin Supreme Court in Kerkman v. Hintz, 418 N.W.2d. 975 (Wis. 1988), and the Illinois Federal District Court in Wilk v. American Medical Assn., 671 F.Supp. 1465 (N.D. Ill. 1987), have held that chiropractors are not physicians and that they should not be characterized

as physicians. Furthermore, the Kerkman Court held that chiropractors should not have the duty to refer patients to physicians. 418 N.W.2d. at 802. Accordingly, since the irrebuttable presumption created by N.J.A.C. 13:35-7.1 that all chiropractors are chiropractic physicians is not necessarily and universally true, pursuant to Vlandis v. Kline, 412 U.S. 441 (1973) and Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974), the irrebuttable presumption violates due process.

The State of New Jersey's lumping together of chiropractor and physician "chiropractic physician" in N.J.A.C. 13:35-7.1 is similar to the State of New Hampshire's attempting to force all of its residents who owned automobiles to display the motto, "Live free or die" on their license plates. Wooley

v. Maryland, 430 U.S. 705 (1977). The United States Supreme Court in Wooley held that the State of New Hampshire could not force an individual to display "live free or die" on his license plates.

Similarly, the State of New Jersey should not force Petitioner Daniel Dalton to accept N.J.A.C. 13:35-7.1 and be called a "chiropractic physician". The State of New Jersey should not be allowed to force its ideological title on Petitioner. There is no compelling state interest sufficient to override Petitioner's religious beliefs, protected by the First and Fourteenth Amendments. The regulation clearly violates Petitioner Daniel Dalton's First and Fourteenth Amendment rights as its components are directly adverse to Petitioner's religious beliefs.

The regulation of N.J.A.C. 13:35-7.1 is also at variance and repugnant to N.J.A.C. 13:35-6.1, which regulation states that a degree can only be issued by an accredited institution of higher education. The degree must be earned by the practitioner and not granted by the legislature. The regulation, N.J.A.C. 13:35-6.1(e) states that the practitioner can be charged with professional misconduct if he or she misrepresents his or her degree or professional society. Clearly, N.J.A.C. 13:35-7.1, which lumps an M.D. degree with a D.C. degree is at variance and repugnant to N.J.A.C. 13:35-6.1 which prohibits such a lumping.

Furthermore, as set forth in Petitioners' papers in support of their motion for reconsideration, chiropractic and medicine are separate, distinct religions.

As set forth in Petitioner's motion for reconsideration papers, the origin of physicians traces back in history to the Greek God Aesculapius, who is the God of healing and medicine. The followers of Aesculapius, the Asclepiads were the first physicians, and were priests in the early Greek temples of healing. The medical profession has adopted his symbol, which consists of two snakes entwined around a staff. Dorland's Illustrated Medical Dictionary, 1974, p. 1462. This symbol is still used and is the official insignia of the American Medical Association. Another medical symbol used today is the caduceus which is the wand of the Hermes or Mercury, who are Greek and Roman Gods, Dorland's, p. 242.

All physicians to this date take the Hippocratic Oath, which begins as follows, "I swear by Apollo the

physician, by Aesculapius, Hygeia and Panacea, and I take to witness all the gods, all the goddesses, ..." Dorland's, p. 715.

Clearly, all physicians have to take an oath to various Greek and Roman Gods. The Holy Bible, Catholic Action Edition, 1953, states in Exodus, chapter 20, verse 3 that, "you shall have no other gods besides me." Petitioner, Daniel Dalton, who believes in only one God would commit blasphemy if he accepted physicians or medicine. As in Mathew, chapter 12, verses 31-32, blasphemy against God will not be forgiven. The regulation, N.J.A.C. 13:35-7.1, lumps the two religions together by characterizing chiropractors as being physicians. Clearly, the state has conveyed or attempted to convey a message that the religion of medicine is favored or preferred over chiropractic, in

violation of this Court's holding in Wallace v. Jaffree, 472 U.S. 38, 70 (1985); Torasco v. Watkins, 367 U.S. 488 (1961). A state government cannot force an individual to profess a belief or disbelief in any religion. Everson v. Board of Education, 330 U.S. 1, 15 (1947). See also Watson v. Jones, 80 U.S. 679, 728 (1871) The New Jersey government by characterizing chiropractors as physicians and by requiring chiropractors to perform medical tests in N.J.A.C. 13:35-7.1 is illegally attempting to force Petitioner Daniel Dalton to profess a belief in the religion of medicine and disbelief in his religion of chiropractic, Essene Christianity and Congregation of Universal Wisdom. Also, the State of New Jersey, in displaying the icons/gods of the Caduceus and the staff of Aesculapius) on government property -- state

ambulances and hospitals is in violation of this Court's holding in County of Allegheny v. American Civil Liberties Union, _____U.S._____, 109 S.Ct 3086 (1989).

Considering the fact that medicine and chiropractic are religions, the State of New Jersey has no right to license physicians or chiropractors, or prefer the religion of medicine over the religion of chiropractic. Significantly, the State of New Jersey does not license mohels who perform surgery, nor does it license Christian Scientists who set bones. As a corollary to this, the State has no right to grant recognition of religion powers, as it has done in N.J.S.A. 39:6A-2(e).

This court should settle the question of whether N.J.A.C. 13:35-7.1 is unconstitutional, because Petitioners contend that it has been

unjustly applied to Petitioner Daniel Dalton in this case. The Appellate Division applied N.J.A.C. to Petitioner in violation of Petitioner's religious beliefs. It is highly likely that this regulation will be contested in the near future by a chiropractor in New Jersey or an individual who wishes to become a licensed chiropractor in New Jersey but who does not believe in physicians or medicine. Furthermore, N.J.A.C. 13:35-7.1 is practically identical to the legislation in the Kerkman case which was rejected by the Wisconsin Supreme Court.

This Court should grant Petitioners' Petition for writ of certiorari in order to settle the question of whether chiropractors and physicians and their religions are separate and distinct and to clarify the distinction between straight chiropractors and chiropractic

physicians. This issue has been raised in this case and in state and federal court cases, cited above, but has not yet been decided by the United States Supreme Court.

II. The New Jersey State Courts Violated Petitioner Daniel Dalton's Due Process Rights In Their Interpretation And Application Of N.J.S.A. 17:33A-6(b).

The Law Division and Appellate Division held that Petitioner Daniel Dalton had to give Respondent a verification/certification pursuant to N.J.S.A. 17:33A-6(b) relating to his straight chiropractic care given to Petitioner Virginia Dalton. The statute, which was deleted on December 24, 1987, prior to Respondent's Order to Show Cause application, stated as follows:

> The Commissioner shall promulgate rules and regulations requiring any and all persons or practitioners seeking payment for services or

> materials which will be reimbursed by an insurer to verify that the services and materials were necessary and were, in fact, furnished.

N.J.S.A. 17:33A-6(b), deleted by amendment P.L. 1987, c. 342.

Under the plain language of the statute, Petitioner Daniel Dalton should not have to submit a verification/certification to Respondent as he was not seeking payment from Respondent; Petitioner Virginia Dalton was seeking payment. Petitioners confirmed this with the New Jersey Department of Insurance. The statute does not restrict the individual making a verification/ certification to practitioners. The statute specifically mentions "persons or practitioners". Hence, Petitioner Virginia Dalton could have given a verification/certification to Respondent. Accordingly, the March 29, 1988 Order which required

Petitioner Daniel Dalton to submit a verification/certification to Respondent deprived Petitioner of due process because it required him to do something which under New Jersey law, he did not have to do. Due process protects individuals from being forced to perform tasks which they are not required by law to perform. Petitioner Daniel Dalton was not asking for anything in this case nor was he entitled to anything. The New Jersey Court's compelling Petitioner Daniel Dalton to submit a verification/ certification to Respondent violates Petitioner's right to be left alone, which right has been recognized by this Court in FCC v. Pacifica Foundation, 438 U.S. 726, 748 (1978). In addition, Petitioner's right to privacy rights have been ignored. See Griswold v. Connecticut, 381 U.S. 479 (1965).

Furthermore, because the applicable statute N.J.S.A. 17:3A-6(b) was repealed on December 24, 1987, Respondent should not have sought an Order compelling Petitioner Daniel Dalton to give it a verification/ certification. The Appellate Division ignored the general rule in New Jersey which sets forth that the repeal of a statute takes away all remedies given by the repealed statute and defeats all actions and proceedings pending under it at the time of its repeal. Parsippany Hills Assn. v. Rent Leveling Board, 194 N.J. Super. 34, 42 476 A.2d 271, 275 (App. Div. 1984). Such a repealed statute is considered as if it had never existed, except as to matters and transactions past and closed. Id. Thus, the Respondent should not have been able to obtain an Order, compelling Petitioner Daniel Dalton to

submit a verification/certification to Respondent.

As in Point III below, the New Jersey State courts have unconstitutionally forced Petitioner Daniel Dalton to deal with insurance companies against his will. This Court should settle the question of whether or not a practitioner who in his or her practice does not wish to deal or have any type of contact with insurance companies should be, nevertheless, forced to have such dealings or contact. This issue has not yet been settled by this Court.

III. The New Jersey State Courts Violated Petitioner Daniel Dalton's Due Process and Privacy Rights In Their Interpretation and Application Of N.J.S.A. 39:6A-13(b).

The Law Division and Appellate Division held that Petitioner Daniel Dalton had to produce his original

patient records of Petitioner Virginia Dalton to Respondent pursuant to N.J.S.A. 39:6A-13(b). This statute states that at the request of the insurer a physician must produce patient records to the insurer and permit the inspection and copying of patient records. The statute does not mention the word "chiropractor" or any other non-medical profession.

In Respondent's opposition brief submitted two months after Petitioner's brief in support of their amended notice of appeal, Respondent incorrectly contended that Petitioner Daniel Dalton was a physician. As a result of the Appellate Division's Order dated March 2, 1989, Petitioner Daniel Dalton was not permitted despite his request to do so, to further demonstrate to the court that he is not a physician and that chiropractors and physicians are completely

separate and distinct in practice, philosophy, beliefs and religions.

Petitioner Daniel Dalton contended before the Appellate Division that this March 2, 1989 Order denied him procedural due process and caused the Appellate Division to make its wrongful assumption that Petitioner Daniel Dalton did not object to N.J.A.C. 13:35-7.1, as noted above. Accordingly, because Petitioner Daniel Dalton is not a physician and cannot be one because of his Judeo-Christian religious beliefs, the Appellate Division erroneously interpreted N.J.S.A. 39:6A-13(b) as including chiropractors. Although the Appellate Division relied, in part, on N.J.S.A. 39:6A-2(e) in upholding Petitioner Daniel Dalton's having to produce patient records, this statute improperly includes non-medical professions as falling under the

definition of "medical expenses". Clearly, the New Jersey legislature needs to re-draft the statutes and regulations challenged in this case.

Furthermore, the Appellate Division, in its decision, ruled, in effect, that a practitioner who is not seeking payment from an insurance company that he has no contact or dealings with, has to produce original patient records to the insurance company prior to the patient/insured getting reimbursed. The implication of the Appellate Division's ruling is that all practitioners who require payment from the patient and who do not complete insurance forms or make insurance claims, have to produce patient records to the insurance company, rather than to the insured. Petitioner contends that the Appellate Division erred in rejecting Petitioner's argument that N.J.A.C.

13:35-6.5(b) was applicable. Under this regulation known as the "patient record rule", the practitioner has a choice of giving copies of the patient records or a summary report to the insured/patient or to the patient's authorized representative.

The Appellate Division's decision violates Petitioner Daniel Dalton's due process as it forces him to become involved in a third party contract situation despite the fact that he is not seeking anything nor is he asking for anything from the insurance company. Clearly, N.J.S.A. 39:6A-13(b) impairs his obligation of contract with Petitioner Virginia Dalton. Also, in Point Two, Petitioner's right to privacy and right to be left alone has been violated. Significantly, practitioners are not forced by the federal government to be involved with Medicare or Medicaid patients. Also,

based on the Appellate Division's decision, Petitioner Daniel Dalton can no longer render needed care to patients who happened to be injured in automobile accidents as he would be forced to deal with insurance companies. Clearly the decision will affect Petitioner's ability to earn a living. See Schebert v. Verner, 374 U.S. 398 (1963).

Based on the Appellate Division's decision, a practitioner from Oregon or a practitioner who does not deal with insurance companies, who renders care to a New Jersey patient with New Jersey motor vehicle insurance, has to submit patient records directly to the New Jersey insurance company or else the patient/insured does not get reimbursed.

Also, the Appellate Division affirmed Petitioner Virginia Dalton's right to be examined by a straight

chiropractor. However, the Appellate Division refused to accept the fact that Petitioner Daniel Dalton is a straight chiropractor. The Appellate Division applied the chiropractic physician regulation to Petitioner. Clearly this application produces an unjust result and conflirts with the religious rights granted to Petitioner Virginia Dalton.

As in Point II above, this court should settle the question of whether or not a practitioner who does not wish to deal with or have any type of contact with insurance companies should be, nevertheless, forced to have such dealings or contact. This issue has not yet been settled by this Court.

IV. The New Jersey State Courts Failed to Uphold Petitioner Virginia Dalton's Claim That N.J.S.A. 39:6A-13(d) Is Unconstitutional As Presently Drafted

In their Order to Show Cause, Respondent sought to have Petitioner Virginia Dalton examined by a chiropractic physician. Petitioner Virginia Dalton objected to being examined by a chiropractic physician or any physician as this violated her religious beliefs. The Law Division Judge granted Petitioner Virginia Dalton's less restrictive argument and recognized her religious beliefs by ordering that she be only examined by one of five straight chiropractors who were religiously acceptable to her. With respect to this aspect of the March 29, 1988 Order, Respondent stated to the Law Division Judge that it would notify Petitioners as to

which straight chiropractor Petitioner Virginia Dalton would be examined by.

Petitioner Virginia Dalton amended her Notice of Appeal to include an allegation that the terminology of N.J.S.A. 39:6A-13(d) was unconstitutional as it permits an insurance company to require an insured to be examined by a physician or physicians. The word "chiropractor" is not mentioned in the statute section. Only the word "physician" is mentioned. Although Petitioner Virginia Dalton did successfully argue before the Law Division that she should be examined by a straight chiropractor, as of the time of her Amended Appeal and to date, Respondent has not told Petitioner which of the five straight chiropractors she has to be examined by. The Appellate Division erroneously stated in its decision relying

on Respondent's brief, that Petitioner Virginia Dalton has refused to be examined by even a straight chiropractor. Hence, it is clear that insurance companies can utilize this statute to harass insurers by delaying payment unless the insured gets examined by a physician or a chiropractic physician of the insurance company's choice, regardless of the insured's religious beliefs and regardless of whether the insured is under the care of a religious practitioner (i.e., a Christian Scientist or a Minister of the Congregation of Universal Wisdom) who is not a licensed practitioner.

The New Jersey State Courts failed to recognize the unconstitutionality of N.J.S.A. 39:6A-13(d) as it is presently drafted in that it permits insurance companies to force or attempt to force an insured to be

examined by a physician or a chiropractic physician.

This Court should grant Petitioner Writ of Certiorari to determine whether N.J.S.A. 39:6A-13(d) is unconstitutional, as Petitioners allege. The New Jersey State Courts' interpretation of this statute necessitates review by this court as this court needs to set forth a definitive definition of "physician" and "chiropractor" and find that the two professions are distinct, thereby requiring New Jersey legislature to amend applicable statutes and resolutions.

V. The New Jersey State Courts' Decisions In This Case Have Resulted In an Injustice To Petitioner Virginia Dalton

As a result of the New Jersey State Courts' decisions, Petitioner Virginia Dalton, the insured, has not been reimbursed for $4,490.00 of

chiropractic care despite any fault of her own. At the most, Petitioner Virginia Dalton asserted her religious/constitutional rights and objected to being examined by a chiropractic physician. The trial court permitted Petitioner to be examined only by one of five straight chiropractors of her own choosing. However, the State Courts' decisions have conditioned her reimbursement of her $4,490.00 upon the actions of an independent practitioner who does not religiously believe in physicians and who does not deal with insurance companies.

The New Jersey courts completely lost sight of one of the main purposes of New Jersey's No Fault Insurance Act, which is to provide prompt payment of medical or chiropractic expenses incurred by insureds in automobile accidents. The New Jersey courts have

given insurance companies in New Jersey incentive and authority to delay reimbursements to the injured insured if a practitioner chooses not to abide by their intrusive, unconstitutional requests, and an insured religiously chooses not to be examined by one of the insureds physicians or chiropractic physicians.

Furthermore, as Petitioners argued in their Motion For Reconsideration before the Appellate Division, the Appellate Division decision is unjustly partially based on the fact that Petitioners are married. Although the Appellate Division stated that it suggested no fraud, it stated that it was concerned with the potential for fraud because Petitioners were married. In their Motion For Reconsideration, Petitioners argued that there is a potential for fraud in any insurance claim.

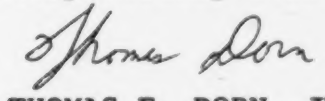
Petitioners pointed out that when a patient pays the practitioner and they seek reimbursement from the insurer, there is no incentive for fraud, unlike the situation where a practitioner submits a claim form on behalf of the patient. The fact that Petitioners are married, as argued in their Motion For Reconsideration should not matter. The institution of marriage is to the degree of being sacred. Griswold v. Connecticut, 381 U.S. 479 486 (1965).

This court should grant Petitioners' petition for writ of certiorari in this case as this case raises the issue of whether insurers should be penalized if they are married to their practitioner, which is an issue which has not yet been settled by this court.

CONCLUSION

For the foregoing reasons, Petitioners respectfully submit that this court should grant this Writ of Certiorari in order to review the decisions of the New Jersey State Courts.

Respectfully submitted



THOMAS F. DORN, JR.

ROBERT P. GLICKMAN, ESQ.
15 Village Plaza
South Orange, New Jersey
201/761-1200
Attorneys for Petitioners, Virginia Dalton and Chiropractor Daniel J. Dalton

DATED: December 21, 1989

APPENDIX

INDEX

PAGE

Order, 3-29-88, New Jersey Superior Court, Law Division.... A-1

Order, 10-12-88, New Jersey Superior Court, Appellate Div.. A-6

Order, 11-3-88, New Jersey Superior Court, Appellate Div...A-8

Order, 3-2-88, New Jersey Superior Court, Appellate Div.....A-10

Opinion, 3-3-89, New Jersey Superior Court, Appellate Div...A-13

Order, 5-22-89, New Jersey Superior Court, Appellate Division.....A-46

Order, 9-26-89, New Jersey Supreme Court.....A-47

N.J.A.C. 13:35-7.1.....A-48

N.J.A.C. 13:35-6.1.....A-55

N.J.S.A. 17:33A-6(b).....A-59

N.J.S.A. 13:35-6.5(b).....A-60

N.J.S.A. 39:6A-13(b).....A-60

N.J.S.A. 39:6A-13(d).....A-62

N.J.S.A. 39:6A-2(e).....A-63

SORIANO, HENKEL, BIEHL, MATTHEWS, MARIENLLO & RIVA
Attorney for Plaintiffs
314 Broad Street
Bloomfield, New Jersey 07003
201/743-1901

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Plaintiff	:SUPERIOR COURT OF NEW JERSEY :LAW DIVISION BERGEN COUNTY
-vs-	DKT #L-30458-88
VIRGINIA DALTON and CHIROPRACTOR DANIEL J. DALTON, Defendants	: Civil Action : ORDER

This matter being presented to the Court by Soriano, Henkel, Biehl, Matthews, Marinello & Riva, Esqs., appearing, on the return date of an Order to Show Cause before the Honorable Arthur Minuskin, J.S.C.; Thomas F. Dorn, Esq., appearing on behalf of Robert P. Glickman, Esq., attorney for defendants, and the Court having read and considered the Verified Complaint and supporting

Certification, and the Answer and Certifications by defendants in opposition thereto, and for good cause having been shown;

It is on this 29 day of March, 1988;

ORDERED that the defendant, Chiropractor Daniel J. Dalton, produce and permit the inspection and copying of records regarding the history, condition, treatment dates and cost of treatment relating to the treatment of the defendant, Virginia Dalton, for the accident of February 24, 1987, in accordance with N.J.S.A. 39:6A-13 to plaintiff;

AND IT IS FURTHER ORDERED that the defendant, Virginia Dalton, is hereby compelled to submit to a physical examination pursuant to N.J.S.A. 39:6A-13, by one of the five chiropractors listed on the attached

list, unless plaintiff makes application to the Court indicating reasons why one of these said chiropractors should not conduct the examination;

AND IT IS FURTHER ORDERED that the defendant, Chiropractor Daniel J. Dalton, is hereby compelled to submit a Verification/Certification of his treatment of the defendant, Virginia Dalton, pursuant to N.J.S.A. 17:33A-1, et seq. and N.J.A.C. 11:16-1.1, et. seq.

AND IT IS FURTHER ORDERED that the defendants shall comply with the above requirements within 30 days of the date of this Order;

AND IT IS FURTHER ORDERED that in the event the defendants fail to comply with the above requirements within the above-mentioned time period, the attorney for plaintiff may

submit an Ex-Parte Order indicating that the plaintiff shall have no obligation to make personal injury protection benefits payments to the defendant, Virginia Dalton, under policy number 1455-467-E11-30D with regard to injuries sustained in an accident which occurred on February 24, 1987 on Route 3 eastbound in Secaucus, New Jersey, upon submission by attorney for plaintiff of a Certification indicating defendants' failure to comply with this Order;

AND IT IS FURTHER ORDERED that a copy of this Order shall be served upon the attorneys for defendants within 7 days of the date hereof.

_____

ARTHUR MINUSKIN, J.S.C.

Richard Santo, D.C.
289 Lake Street
Upper Saddle River, NJ 07458
(201) 327-0029

William Winters, D.C.
314 Franklin Avenue
Wyckoff, New Jersey 07481
(201) 891-8110

James Doherty, D.C.
84 Bogert Mill Road
Harrington Park, NJ 07640
(201) 768-1968

Robert Sottile, D.C.
365 Franklin Avenue
Wyckoff, New Jersey 07481
(201) 848-0020

Robert Tarantino, D.C.
518 Ridge Road
Lyndhurst, New Jersey 07071
(201) 933-3125

ORDER ON MOTION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO A-4037-87T5
MOTION NO. M-447-88
BEFORE PART: C
JUDGE(S): PETRELLA
SHEBELL
LANDAU

FILED - APPELLATE DIVISION
OCTOBER 14, 1988

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
vs
VIRGINIA DALTON and
CHIROPRACTOR DANIEL J.
DALTON

MOTION FILED: August 8, 1988
ANSWER FILED: September 13, 1988
BY: STATE FARM MUTUAL AUTOMOBILE INSURANCE CO.
SUBMITTED TO COURT: 10-11-88

O R D E R

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 12th DAY OF OCTOBER, 1988 HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANTS, DANIEL AND VIRGINIA DALTON FOR SUMMARY DISPOSITION

GRANTED DENIED OTHER

XXX

SUPPLEMENTAL:

The parties are directed to address in their respective merits brief for the appeal the impact, if any, of the legislative repeal of N.J.S.A. 17:33A-6(b) on the instant case.

FOR THE COURT: JAMES J. PETRELLA

ORDER ON MOTION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: A-4037-87T5
MOTION NO.: A-985-88
BEFORE PART: C
JUDGE: PETRELLA

FILED - APPELLATE DIVISION
NOVEMBER 7, 1988

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

-vs-

VIRGINIA DALTON and CHIROPRACTOR
DANIEL J. DALTON

MOTION FILED: October 11, 1988
SUBMITTED TO COURT: November 2, 1988

O R D E R

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 3rd DAY OF NOVEMBER, 1988 HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT VIRGINIA DALTON AND DANIEL J. DALTON TO AMEND NOTICE OF APPEAL...

GRANTED DENIED OTHER

XX

FOR THE COURT:

JAMES J. PETRELLA P.J.A.D.

ORDER ON MOTION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: A-4037-87T5
MOTION NO.: A-3195-88
BEFORE PART: C
JUDGE: PETRELLA

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

-vs-

VIRGINIA DALTON and CHIROPRACTOR DANIEL J. DALTON

MOTION FILED: February 14, 1989
SUBMITTED TO COURT: March 1, 1989

O R D E R

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 2nd DAY OF MARCH, 1989, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT VIRGINIA DALTON AND CHIROPRACTOR DANIEL J. DALTON TO STRIKE RESPONDENT'S SUPPLEMENTAL BRIEF OR IN THE ALTERNATIVE FOR PERMISSION TO RESPOND TO BRIEF

GRANTED	DENIED	OTHER
	XX	XX

SUPPLEMENTAL:

THE MOTION IS DENIED IN ALL RESPECTS.

FOR THE COURT:

JAMES J. PETRELLA, P.J.A.D.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, PLAINTIFF-RESPONDENT V. VIRGINIA DALTON AND CHIROPRACTOR DANIEL J. DALTON, DEFENDANTS-APPELLANTS

Superior Court of New Jersey
Appellate Division

Submitted April 10, 1989 - Decided May 3, 1989

SYNOPSIS

Automobile insurer brought action to require personal injury protection benefit claimant to verify her claim that she received chiropractic services from her husband. The Superior Court, Law Division, Bergen County, required husband to verify treatment and wife to submit to physical examination as conditions for recovery of benefits, and appeal was taken. The Superior Court, Appellate Division, Landau, J.A.D. held that conditions were properly imposed.

Affirmed.

1. Insurance, Section 545

Where insured under automobile policy submitted personal injury protection benefit claim for chiropractic services provided by her husband, husband could properly be required to verify treatment provided as condition for wife's recovery of benefits. N.J.S.A. 39:6A-13, subds. b, g.

2. Insurance, Section 545

Chiropractor could properly be required to verify treatment he provided to his wife, as precondition for wife's recovery of personal injury protection benefits from automobile insurer, notwithstanding chiropractor's "contract" with wife which required her to handle all insurance requests for information; court could properly require chiropractor to

respond to insurer's inquiries, given potential for fraud and unlikelihood that arm-length contract was entered into as a pre-condition of chiropractic services. N.J.S.A. 39:6A-13, subds. b, g.

3. Constitutional Law Section 296(1)
Insurance, Section 545

Requirement that chiropractor verify treatment he allegedly gave to his wife, as precondition for wife's recovery of personal injury protection benefits from automobile insurer, did not deprive chiropractor of due process right to deal only with those persons he chose; state's interest in success of personal injury protection program and in prevention of fraud justified requiring chiropractor to have direct contact with insurer.

N.J.S.A. 39:6A-13, subd. b; U.S.C.A. Const. Amends. 5, 14.

4. Constitutional Law, Sec. 84.5(1)

Insurance, Section 545

Requirement that personal injury protection benefits claimant submit to physical examination as precondition for recovering for chiropractic services allegedly provided by her husband did not unconstitutionally offend claimant's free exercise of religion; order requiring claimant to submit to physical examination by one of five listed chiropractors adequately protected claimant's religious interests. U.S.C.A. Const. Amend. 1; N.J.S.A. 39:6A-13, subd. d.

Before Judges PETRELLA, SHEBELL AND LANDAU

Robert P. Glickman, attorney for appellants (Thomas F. Dorn, Jr. on the letter brief)

Soriano, Henkel, Biehl, Matthews, Marinello & Riva, attorneys for respondent (William J. Soriano, on the letter brief).

The opinion of the court was delivered by LANDAU, J.A.D.

This matter came to us on appeal originally from that part of an order of the Law Division which required defendant-appellant Chiropractor Daniel J. Dalton (Daniel) "to submit a Verification/Certification of his treatment of the defendant Virginia

Dalton, pursuant to N.J.S.A. 17:33A-1 et. seq. and N.J.A.C. 11:16-1.1 et. seq.," failing which, the plaintiff-respondent State Farm Mutual Automobile Insurance Company (State Farm) was excused from its obligation to pay Personal Injury Protection (PIP) benefits to defendant-appellant Virginia Dalton (Virginia.

Virginia was injured in an automobile accident on February 24, 1987. She allegedly received from her husband, Daniel, "straight chiropractic" treatment (i.e. non-medical and non-technologically implemented or diagnosed) consistent with their religious beliefs as Essene Christians and members of the Congregation of Universal Wisdom. Virginia says that by check dated May 18, 1987, she paid Daniel $4,490.00 for the chiropractic

care he provided, evidenced by paid receipts which detailed the services rendered.

After Virginia submitted a PIP benefit claim for that chiropractic care to her automobile insurance carrier,[1], State Farm demanded that Daniel submit to it a verification/ certification of care pursuant to N.J.S.A. 17:33A-1 et. seq. and that he permit inspection of his records. State Farm also requested that Virginia submit to a physical examination.

When the insurance carrier made these requests for certification, inspection of records and examination, N.J.S.A. 17:33A-1, et. seq. was

---

[1]Both Virginia and Daniel are insured under the same State Farm policy.

in effect, as were regulations adopted by the Department of Insurance in aid of the legislative effort to curb fraudulent insurance claims.

When Daniel and Virginia refused to comply, State Farm commenced this action in the Law Division in January 1988 by a verified complaint and order to show cause. N.J.S.A. 17:33A-6 had just been amended effective December 24, 1987, to delete subsection b. The suit also invoked, however, the policy and provisions of N.J.S.A. 39:6A-13, part of the PIP statute.

Following hearing on affidavits, the trial judge ordered Daniel to permit inspection and copying of his records respecting Virginia's treatment and ordered Virginia to submit to physical examination. He also ordered Daniel to submit the requested

verification/certification of treatment. Daniel asked for reconsideration of the verification/certification portion of the order, and when that was declined, this appeal, initially limited to that issue, was taken.

State Farm moved for summary disposition, contending that the single issue involved only interpretation of N.J.S.A. 17:33A-6(b). We declined to rule summarily under R. 2:8-3(b).

The Notice of Appeal has since been amended to add an assertion that N.J.S.A. 39:6A-13(d) is unconstitutional because it requires Virginia to be examined by a medical physician contrary to her religious beliefs. Appellants also now contend that the trial judge should have been limited

by the legislative deletion of N.J.S.A. 17:33A-6(b). Although it occurred subsequent to the accident, treatments, and State Farm's demands for examination and record verification, the deletion was effective prior to the entry of the order in this case.

The subsection deleted was directed generally at discouraging insurance fraud. It required the Commissioner of Insurance to "promulgate rules and regulations requiring any or all persons or practitioners seeking payment for services or materials which will be reimbursed by an insurer to verify, under oath, that the services and materials furnished were necessary and were, in fact, furnished." N.J.S.A. 17:33A-6(b) (deleted by amendment 1987). It also provided that such

verification was "a condition precedent to payment by the insurer or recourse against the insured." Regulations pursuant to that statute were promulgated as N.J.A.C. 11:16-1.2(a) and 11:16-1.3, but these were repealed effective July 18, 1988, consistent with the legislative deletion. 20 N.J.R. 1720(b) (July 18, 1988). The statement appended to the amending statute says:

> The provision of law which this bill eliminates was originally enacted as a means of controlling fraud by making providers attest that services for which reimbursement was being sought had actually been performed. In practice however, the procedure was deemed by the Department of Insurance to be cumbersome and unworkable. Thus, the department has asked that the requirement for verification be deleted. [Senate Labor, Industry and Professions Committee Statement, A. No. 3434 (reprinted in Annotations following N.J.S.A. 17:33A-6).]

The order under review was signed March 17, 1988, after amendment of the insurance fraud statute but before repeal of the regulations which required verification of treatment. Enforcement of the verification portion of the order has been stayed pending appeal.

Appellants raise both legal and constitutional objections to the court's order.

In the first of two briefs submitted by appellants, it was conceded that the amendment which repealed N.J.S.A. 17:33A-6(b) is not applicable to the present appeal. Appellants there rely largely on the phraseology of the legislation, "requiring any or all persons or practitioners seeking payment for services or materials which will be reimbursed by an insurer to verify

... that the services and materials were necessary and were, in fact, furnished." See N.J.S.A. 17:33A-6(b) (deleted by amendment 1987). Appellants argue that Chiropractor Dalton who provided the services is not seeking payment from State Farm, but that it is Virginia, who furnished receipts from her husband to evidence that services were performed and paid for, who seeks payment. In consequence, they urge, that statute and regulation are not applicable. They also argue the detailed receipts provided all the information which would be contained in a verification/certification, save for the verification or oath.

In their second brief, appellants urge that the repeal of N.J.S.A.

17:33A-6(b) must be deemed to have rendered it a nullity, so that the portion of the order which relief thereon was not statutorily authorized. Appellants say that a repeal of a statute takes away all remedies previously existing under that statute. See Parsippany Hills Assoc. v. Rent Leveling Bd., 194 N.J. Super. 34, 42 (App. Div. 1984), certif. den. 97 N.J. 643 (1984). In consequence, they urge that the regulations adopted under N.J.S.A. 17:33A-1 should not be enforced. Although not cited to us, we recognize this argument as a form of the "time of decision" rule. See Kruvant v. Mayor & Council Tp. of Cedar Grove, 82 N.J. 435, 440-443 (1980). We note that the principle "is not inexorable." Id. at 442.

Nonetheless, our analysis of the present case does not require that we resolve the question of effect of the statutory repeal upon the still-intact regulation at the time of the order of the trial judge, nor the effect of the time of decision rule upon our own appellate action. As we will explore below, we believe that the court's order is sustainable upon broader statutory authorization, and supported by sound public policy.

[1] We hold that the trial judge correctly exercised his discretion, as the "cumbersome" policy which the Department of Insurance declined to itself enforce is consistent with N.J.S.A. 39:6A-13(b) and (g).

N.J.S.A. 39:6A-13(b) provides:

> Every physician, hospital, clinic or other medical institution providing, before and after the bodily injury upon which a claim for personal injury protection benefits is based,, any products, services or accommodations in relation to such bodily injury or any other injury, or in relation to a condition claimed to be connected with such bodily injury or any other injury, shall, if requested to do so by the insurer or the Unsatisfied Claim and Judgment Fund against whom the claim has been made, furnish forthwith a written report of the history,, condition, treatment, dates and costs of such treatment of the injured person, and produce forthwith and permit the inspection and copying of his or its records regarding such history, conditions, treatment dates and costs of treatment. The person requesting such records shall pay all reasonable costs connected therewith.

N.J.S.A. 39:6A-13(g) provides:

> In the event of any dispute regarding an insurer's or the Unsatisfied Claim and Judgment Fund's or an injured person's right as to the discovery of facts about the injured

> person's earnings or about his history, condition, treatment, dates and costs of such treatment, or the submission of such injured person to a mental or physical examination, the insurer, Unsatisfied Claim and Judgment Fund or the injured person may petition a court of competent jurisdiction for an order resolving t he dispute and protecting the rights of all parties. The order may be entered on motion for good cause shown giving notice to all persons having an interest therein. Such court may protect against annoyance, embarrassment or oppression and may as justice requires, enter an order compelling or refusing discovery, or specifying conditions of such discovery; the court may further order the payment of costs and expenses of the proceeding, as justice requires.

As we interpret these statutes, on the facts of the present case, the order under review was well-justified.

Common sense dictates that an insurance carrier should exercise particular care in scrutinizing the

claim of a wife whether medically, chiropractically or otherwise treated by her husband, particularly under circumstances where the insured requires it to litigate to get any record besides receipts showing the number, cost and types of treatment rendered. Where, as here,the insured declines examination, even by a "straight chiropractor" and where, as here, several reviewing chiropractors have questioned the duration and number of daily chiropractic treatments (as many as three times a day) rendered during a period when Virginia was apparently continuing to work, we think it consistent with the policy of the quoted sections that at trial judge permit verified or sworn discovery respecting the actual provision, need, nature and reasonable value of the

chiropractic services. We suggest no fraud. The circumstances described, however, are uniquely vulnerable to fraud, and accordingly non-oppressive discovery is not only the right of the carrier, but in the public interest. More- over, as this is a litigated matter, State Farm would be entitled to take the depositions of Chiropractor Dalton, under oath or verification. R. 4:14-1. R. 4:14-3. A deposition would be far more cumbersome, expensive and demanding of Daniel's time than this court order.

Appellants suggest that N.J.S.A. 39:6A-13(b) does not cover Dalton because he is not a "physician" and does not diagnose or use any medical terminology or procedures. They urge that the language of the statute so

unambiguously excludes a "straight chiropractor" from its requirements that an amendment would be necessary to make this statute applicable. We disagree.

N.J.A.C. 13:35-7.1 is the administrative regulation applicable to the practice of chiropractic. We note that the regulation, applicable to all chiropractors, uniformly uses the term "chiropractic physician" in imposing standards of practice. We assume that the Legislature is familiar with this long-standing regulation, and that Daniel does not contend that the regulation is inapplicable to him. See also N.J.A.C. 13:35-6.14 in which, for the purpose of that section, the words "physician" or "doctor" refer to doctors of medicine, doctors of

osteopathic medicine, doctors of podiatric medicine, and doctors of chiropractic. The evidence shows that Daniel appropriately utilizes the initials "D.C."

A further argument made by apellants arises from another regulation of the Board of Medical Examiners, N.J.A.C. 13:35-6.5(b). This regulation requires a licensee of that board to deliver copies of records to the patient or a designated licensee or duly authorized representative. Appellants argue that it is the exclusive remedy to provide records or summary reports for patients. This regulation, however, merely sets forth a patient's right to his or her records. It neither expresses nor implies any limitation upon the rights of the Legislature or

the courts to impose greater burdens upon licensed treatment providers. Even if the regulation purported to impose such limitation, an administrative body is without independent power to limit the exercise of legislative or judicial authority.

Moreover, this case arises out of the efforts of Virginia to secure payment for chiropractic services rendered to her after suffering an automobile accident in her covered vehicle. Her claim for PIP benefits is necessarily based upon N.J.S.A. 39:6A-4 which includes five categories of benefits within the "additional coverage" mandated therein. As her claim is not one for income continuation, essential services, survivor or funeral benefits, it must

have been made under N.J.S.A. 39:6A-4(a) which provides for "medical expense benefits". These are defined as "[p]ayment of all reasonable medical expenses incurred as a result of personal injury sustained in an automobile accident." Id. (emphasis added).

As defined in the same act, "medical expenses" means expenses for medical treatment...and other reasonable and necessary expenses resulting from the treatment prescribed by persons licensed to practice medicine and surgery...or chiropractic...or any nonmedical remedial treatment rendered in accordance with a recognized religious method of healing." N.J.S.A. 39:6A-2(e). Thus, the statute includes within the definition of "medical